

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
BY: J. P. McGowan
Senior Deputy Attorney General
ATTORNEY FOR PLAINTIFF
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Bureau of Consumer Protection
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COMMONWEALTH OF PENNSYLVANIA	:	IN THE COURT OF COMMON PLEAS
THOMAS W. CORBETT, JR.	:	OF SUSQUEHANNA COUNTY
ATTORNEY GENERAL	:	
	:	
	:	
	:	
<u>PLAINTIFF</u>	:	
vs.	:	
	:	CIVIL ACTION
NORTHEAST BARN BUILDERS, INC.	:	
and	:	
JOHN BALL and CATHY BALL,	:	
both individually and d/b/a	:	
NORTHEAST BARN BUILDERS, INC.	:	
	:	
	:	
<u>DEFENDANTS</u>	:	NO.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Petition and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by

the court without further notice for money claimed in the Petition or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOU LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Susquehanna County Prothonotary' Office
Courthouse
Montrose, PA 18801
(570) 278-4600, Ext. 120

Protection Law for all willful violations of the Consumer Protection Law. The Commonwealth seeks to recover its investigative costs for enforcement of the Consumer Protection Law. In support thereof, the Commonwealth respectfully represents the following:

1. The Plaintiff is the Commonwealth of Pennsylvania acting by Attorney General Thomas W. Corbett, Jr.

2. The Defendant is Northeast Barn Builders, Inc., which, to the best of the Commonwealth's information and belief, is a Pennsylvania corporation with its principal place of business located at RR 1, Box 53-D, Springville, Susquehanna County, Pennsylvania, and which has also done business from a place of business at Route 29, RD 1, 321 A-3, Montrose, Susquehanna County, Pennsylvania.

3. Co-Defendant John Ball is an adult individual whose last known address was RR 1, Box 53-D, Springville, Pennsylvania, and who did business as Northeast Barn Builders from that same location.

4. Co-Defendant Cathy Ball is an adult individual who is currently incarcerated at the Susquehanna County Correctional Facility, Montrose, Pennsylvania, and who previously resided at RR 1, Box 53-D, Springville, Pennsylvania, and who did business as Northeast Barn Builders from that same location.

5. At all times relevant hereto, Defendants John Ball and Cathy Ball have exercised complete control over Northeast Barn Builders, Inc., and have operated it as their own business.

6. At all times relevant hereto, Defendants John Ball and Cathy Ball have personally participated in the fraudulent or deceptive acts set forth herein.

7. The Commonwealth has reason to believe that the Defendants have used, are using, or are about to use practices declared unlawful by the Consumer Protection Law, (a copy of which Act is attached hereto as Exhibit "A").

8. The Commonwealth previously filed a similar action against the Defendants on November 22, 1999, which was docketed at No. 1999-1198 CP.

9. The prosecution of that action was stayed by the filing of a bankruptcy petition by the Defendants in 2000.

10. Said bankruptcy was dismissed on March 15, 2001.

11. By the time of the dismissal of the bankruptcy proceeding, both Defendants John Ball and Cathy Ball had fled the Commonwealth, and their whereabouts were unknown until October, 2005.

12. On or about October 12, 2005, counsel for the Commonwealth was advised by criminal prosecutors in Susquehanna County that Cathy Ball had been arrested in Florida and returned to Pennsylvania to face various criminal charges related to her business operations.

13. The Commonwealth believes the public interest is served by seeking before this Honorable Court a Permanent Injunction to restrain the operations, methods, acts and practices of Defendants as hereinafter set forth, as well as seeking restitution for consumers and civil penalties for violations of the law.

14. The Commonwealth believes that the imposition of civil penalties of three thousand dollars (\$3,000) for each instance of a willful past or present violation of the Consumer Protection Law involving senior citizens as victims and one thousand dollars (\$1,000) in other instances is appropriate under 201-8(b) of the Consumer Protection Law.

COUNT I: FAILURE TO PERFORM WORK
AFTER ACCEPTING CONSUMER DEPOSITS

15. The Commonwealth reiterates the allegations of paragraphs (1) through (14) as if fully set forth herein.

16. During the period of April, 1998, through August, 1999, Defendants accepted substantial deposits from ten (10) consumers for the construction of barns or storage buildings on the consumers' properties.

17. Collectively, the deposits totaled fifty thousand, one hundred twenty-seven dollars and sixty-five cents (\$50,127.65).

18. On or about April 21, 1999, Defendants accepted the sum of three thousand, six hundred and ninety-three dollars and thirty-three cents (\$3,693.33) from Jack Legg of Brackney, Pennsylvania, which sum represented one-third of the cost of a barn to be constructed on Mr. Legg's property.

19. On or about August 19, 1998, Defendants accepted the sum of two thousand, three hundred dollars (\$2,300) from Doug Wood of Susquehanna, Pennsylvania, which sum represented nearly one-half the cost of a storage building to be built on Mr. Wood's property.

20. On or about September 15, 1998, Defendants accepted a deposit of two thousand, five hundred dollars (\$2,500) from Ronald Colpitts of Windsor, New York, for the construction of a barn on the Colpitts' property.

21. On or about April 22, 1998, Defendants accepted a deposit of four thousand, seven hundred dollars (\$4,700) from Daniel Kitchura, Jr., of Jermyn, Pennsylvania, which represented more than one-half the cost of a pole barn on the Kitchura property.

22. Despite promises to each of these four (4) consumers to begin work promptly, Defendants have failed to perform any work for them.

23. Between March and June of 1999, Gary D. Yeager of Tunkhannock, Pennsylvania, paid the Defendants a total of five thousand, ten dollars (\$5,010) towards a seven thousand, five hundred and fifteen dollar (\$7,515) contract price for the construction of a pole shed on his property.

24. Defendants promised Mr. Yeager to begin construction in August, but failed to do so and failed to return several phone calls from Mr. Yeager.

25. Paul and Darla Treaster of Dushore, Pennsylvania, gave Defendants a deposit of ten thousand, three hundred and thirty-one dollars and sixty-six cents (\$10,331.66) on April 3, 1999, towards the construction of a house barn.

26. After several telephone conversations with the consumers, Defendant Cathy Ball promised to begin construction in September but failed to do so.

27. On April 17, 1999, J. Brian Keiper of Towanda, Pennsylvania, gave Defendants a two thousand, five hundred dollar (\$2,500) deposit to construction a garage.

28. Despite several telephone calls by the consumers, Defendants failed to begin any construction.

29. On August 23, 1999, Belle Shilling of Uniondale, Pennsylvania, paid Defendants the sum of four thousand, nine hundred and sixty-six dollars and sixty-six cents (\$4,966.66) toward the costs of building a two car garage.

30. Despite promises to begin work, no work has yet begun.

31. On or about July 27, 1999, Charles and Joanne Beers of Monroeton, Pennsylvania, paid the Defendants the full contract price of eleven thousand, three hundred and ninety-five dollars (\$11,395) for the construction of a garage.

32. As of October 20, 1999, Defendants failed to begin any work on this contract, despite contacts from the consumers and their attorney to secure the Defendants' compliance with the contract.

33. On or about August 19, 1999, Valery S. Mitros paid Defendants two thousand, seven hundred and thirty-one dollars and sixty-six cents (\$2,731.66) which represented a one-third deposit toward the cost of construction a pole barn on his property.

34. Defendants promised to complete the Mitros contract within four to five weeks, but never started it.

35. Subsequent to the filing of the original lawsuit in 2000, the Commonwealth has received four (4) additional consumer complaints, all alleging a similar pattern by Defendants of accepting monies from consumers for work never begun.

36. The total amount of losses in these new complaints is twenty-seven thousand, seven hundred forty dollars and seventy-five cents (\$27,740.75). (A listing of these complainants and the amount of losses of each is attached as Exhibit "B" hereto and made a part hereof).

37. During the period between the filing of the Commonwealth's complaint in 2000 and the Defendants' departure from Pennsylvania, three of the above named consumers (Legg, Yeager and Mitros) were compensated by the Defendants.

38. Three other claimants (Wood, Colpitts and Shilling) received restitution in 2005, after the filing of criminal charges against Cathy Ball.

39. The current amount of deposit monies owed to the remaining consumers, including those newer claims listed in Exhibit “B”, is fifty-six thousand, six hundred sixty-six dollars and seventy-five cents (\$56,666.75).

40. As such, Defendants’ actions with respect to these consumers constituted separate violations of §201-3 of the Consumer Protection Law as defined by the following subsections of §204:

- (v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;
- (ix) Advertising goods or services with intent not to sell them as advertised;
- (xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

41. The Commonwealth alleges that all of the practices described above were performed willfully and, therefore, the imposition of civil penalties of one thousand dollars (\$1,000) for each violation of the Consumer Protection Law, in addition to the other relief sought, is appropriate.

COUNT II:
FAILURE TO COMPLETE IN A WORKMANLIKE MANNER

42. The Commonwealth reiterates the allegations of paragraphs (1) through (41) as if fully set forth herein.

43. In the operation of their business, Defendants have accepted substantial payments for construction projects which they performed in a shoddy or unworkmanlike manner.

44. The Commonwealth investigated the complaints of Lynn and Joseph McGee, Donald and Ruthann Pelino, and Thomas Warholic, all of whom have paid monies to the Defendants for work which was performed in a shoddy or unworkmanlike manner.

45. In the case of the McGee complaint, Defendants were paid six thousand, twenty five dollars (\$6,025) towards the contract price of eight thousand, four hundred and seventy-four dollars and seventy cents (\$8,474.70) for the construction of a pole barn but failed to complete an overhead door on the barn as per the contract.

46. In addition, the McGees paid a third party one thousand, three hundred and fifty dollars (\$1,350) for the installation of a concrete floor pad.

47. In the case of the Warholic complaint, Defendants were paid in excess of eleven thousand dollars (\$11,000) to construct a barn.

48. Defendants eventually completed said barn but for the installation of an overhead door which conformed to the contract, which called for the installation of a door with a certain style of windows.

49. Mr. Warholic eventually had to obtain the appropriate window on his own.

50. In the case of the Pelino complaint, Defendants were paid a total of sixteen thousand, two hundred dollars (\$16,200) between September 2, 1996, and November 8, 1996, which represented two thirds of the cost of a barn to be built on consumer's property.

51. Since delivering certain materials on or about November 8, 1996, Defendants have failed to perform any work under the contract.

52. All tolled, Defendants have failed to complete and perform workmanlike home repairs for these three (3) consumers after accepting more than thirty-three thousand dollars (\$33,000) from them.

53. Since the filing of the initial lawsuit, the Commonwealth has received four (4) additional consumer complaints, all alleging that Defendants failed to properly complete contracts for which they had been paid.

54. The total amount of losses set forth in these complaints is twenty-one thousand, five hundred eighty-eight dollars and forty-four cents (\$21,588.44). (A listing of these complainants and the amount of losses of each is attached as Exhibit "C" hereto and made a part hereof).

55. As such, Defendants' actions constituted separate violations of §201-3 of the Consumer Protection Law as defined by the following subsections of §204:

- (v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;
- (vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;

- (xvi) Making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing;
- (xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

56. The Commonwealth alleges that all of the practices described above were performed willfully and, therefore, the imposition of civil penalties of one thousand dollars (\$1,000) for each violation of the Consumer Protection Law, in addition to the other relief sought, is appropriate.

57. The Commonwealth further alleges that one victim, Marilyn Dibble, was age sixty (60) or older at the time of this transaction, thereby subjecting the Defendants to enhanced civil penalties of three thousand dollars (\$3,000) for this violation, pursuant to §201-8(b) of the Consumer Protection Law.

COUNT III: FAILURE TO PERFORM WORK IN A COMMERCIALY ACCEPTABLE MANNER

58. The Commonwealth reiterates the allegations of paragraphs (1) through (57) as if fully set forth herein.

59. Defendants' actions also constitute separate violations of the Consumer Protection Law for failure to perform work in a commercially acceptable manner.

60. As such, Defendants' actions constitute separate violations of §201-3 of the Consumer Protection Law as defined by the following subsections of §204:

- (v) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

- (vii) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another;
- (xvi) Making repairs, improvements or replacements on tangible, real or personal property, of a nature or quality inferior to or below the standard of that agreed to in writing;
- (xxi) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding.

61. The Commonwealth alleges that all of the practices described above were performed willfully and, therefore, the imposition of civil penalties of one thousand dollars (\$1,000) for each violation of the Consumer Protection Law, in addition to the other relief sought, is appropriate.

62. The Commonwealth further alleges that one victim, Marilyn Dibble, is over the age of sixty (60), thereby subjecting the Defendants to enhanced civil penalties of three thousand dollars (\$3,000) for this violation, pursuant to §201-8(b) of the Consumer Protection Law.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth prays this Honorable Court to enter a Decree as prayed for herein below:

A. Directing Defendants, jointly and severally, to make consumer restitution through the Bureau of Consumer Protection to those consumers referenced in Counts I and II in the total amount of seventy-eight thousand, two hundred fifty-five dollars and nineteen cents (\$78,255.19);

B. Directing Defendants, jointly and severally, to make appropriate consumer restitution through the Bureau of Consumer Protection to be distributed to those consumers referenced in Count II above;

C. Directing Defendants, jointly and severally, to make appropriate restitution to any other consumers not specifically listed herein above provided that said losses are established at trial to the satisfaction of the court;

D. Directing Defendants, jointly and severally, to forfeit and pay to the Commonwealth separate civil penalties of one thousand dollars (\$1,000) for each instance of a willful violation of the Consumer Protection Law established at the trial of this matter, as well as an enhanced civil penalty of three thousand dollars (\$3,000) for each willful violation involving consumer victims over the age of sixty (60). Based on the complaints received thus far, the Commonwealth seeks a total of thirty-four thousand dollars (\$34,000) in civil penalties (seventeen (\$17,000) based on Counts I and II (including one victim age sixty (60) or older), and a similar amount based on Count III;

E. Enjoining Defendants, jointly and severally, from any further violations of the Consumer Protection Law and, further, directing the forfeiture of Defendants' rights to do business as contractors until such time as they can demonstrate to this court that they have made adequate provisions for restitution to those consumers referred to in paragraphs (A) through (C) of this Prayer for Relief;

F. If necessary, appointing a Receiver under Pa. R.C.P. 1533 to determine and collect Defendants' assets and liquidate same to satisfy this Order;

G. Granting the Commonwealth the costs of investigation and costs of filing this action; and

H. Granting such further relief as this court may deem necessary.

Respectfully Submitted:
COMMONWEALTH OF PENNSYLVANIA

BY: THOMAS W. CORBETT, JR.
THOMAS W. CORBETT, JR.
ATTORNEY GENERAL

BY: FRANK T. DONAGHUE
FRANK T. DONAGHUE
CHIEF DEPUTY ATTORNEY GENERAL

BY:

J. P. McGOWAN
DEPUTY ATTORNEY GENERAL
OFFICE OF ATTORNEY GENERAL
BUREAU OF CONSUMER PROTECTION
ROOM 100, SAMTER BUILDING
101 PENN AVENUE
SCRANTON, PA 18503-2025
(570) 963-4913

EXHIBIT “B”

1.	David Morgan Scranton, PA	\$ 7,000.00
2.	Larry Gearhart Hunlock Creek, PA	\$ 2,824.75
3.	Ronald Skubic Forest City, PA	\$ 4,250.00
4.	Ruth Schemm Chalfont, PA	\$13,666.00
		<hr/>
TOTAL		\$27,740.75

EXHIBIT "C"

*	1.	Marilyn Dibble Sugar Run, PA	\$ 561.80
	2.	Donald Pelino Hop Bottom, PA	\$16,200.00
	3.	George Montross Noxen, PA	\$ 2,639.00
	4.	Robert Srebro Peckville, PA	\$ 2,187.64
TOTAL			<hr/> \$21,588.44

* Age sixty (60) or older at time of transaction.